STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Rate MAP-P Modernization Action Plan - Pricing Annual Update Filing	))))))	Docket No. 13-0301

RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION TO THE MOTION OF AMEREN ILLINOIS COMPANY TO STRIKE PORTIONS OF THE INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION AND TO THE SUPPLEMENTAL MOTION OF AMEREN ILLINOIS COMPANY TO STRIKE PORTIONS OF THE REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.190 of the Rules of Practice of the Illinois Commerce Commission ("Commission" or "ICC") (83 Ill. Adm. Code 200.190) and Section 10-101 of the Public Utilities Act (the "PUA" or "Act"), and pursuant to the schedule set by the Administrative Law Judge on October 18, 2013, respectfully submits its Response to the Motion of Ameren Illinois Company to Strike Portions of the Initial Brief of the Staff of the Illinois Commerce Commission ("Motion I") and to the Supplemental Motion of Ameren Illinois Company to Strike Portions of the Reply Brief of the Staff of the Illinois Commerce Commission ("Motion II") (collectively, "Motions") in the instant proceeding.

I. ARGUMENT

A. Introduction

These Motions have broad ramifications that may not be readily discernible. At its essential core, this issue is about the suppression of Staff's ability to adequately advocate its position. Ameren's position, as far as Staff understands it, would suppress Staff's chosen language, limiting Staff's advocacy to only identifying adjustments and providing limited "generic rationales." (Motion I at 2.)

Staff recognizes that it may have inadvertently invited the first Motion by its attempts to move into the record Staff responses to AIC-Staff DRs series 15. The issues raised in the Motions, however, have little, if anything, to do with Staff responses to AIC-Staff DR 15. If there had been any doubt, the Supplemental Motion (Motion II) and the Motion to Strike language from the AG's Reply Brief make this point perfectly clear.

Ameren is conflating "expert" opinion testimony with arguments in briefs. When making an argument in brief, a party's argument may inherently include an opinion but it is not an "expert" opinion if it merely extrapolates from the evidentiary record; it is an argument that is either persuasive or not. Staff witness Ms. Pearce pre-filed her "expert" opinion testimony and was available for cross-examination. Ms. Pearce's expert pre-filed testimony was admitted into the record with no objection. Consequently, Staff is free in brief to make arguments and offer the opinion of its advocates based upon the record evidence. There is no requirement that its arguments be identical to or even mimic the record evidence. Logic and reasoning are allowed in briefs. Ameren's assertion that the arguments and opinion in Staff's briefs amount to

introducing additional expert opinion testimony into the record is incorrect. If Ameren believes that the arguments and opinions expressed in Staff's brief are misguided, its recourse is not to attempt to strike those arguments, but to argue that such arguments are not persuasive.

If Staff's arguments in briefs are confined to its pre-filed language, then logic dictates that it would also be prohibited from offering an opinion or argument on any issue that no Staff witnessed addressed. This point is notably critical for those parties with limited resources advocating on behalf of consumers that simply cannot afford expert witnesses to address every issue. In fact, many of them cannot afford to hire any expert witnesses, in which case they often offer non-expert opinion and argument citing to the record provided by the other parties. Ameren's theory under its Motions would silence these advocates entirely.

B. Staff Never Waived Any Right To Offer Opinion And Argument in Briefs

Ameren contends that "[i]t is entirely improper to use cross-examination of a witness as a means to introduce new positions unveiled in briefing." (Motion I at 4.) Ameren fails to cite to anything to support this novel theory. In fact, it is entirely proper to use cross examination to introduce new issues. After all, not even Ameren's learned counsel knows exactly how their questions will be answered.

Ameren also argues that: "[b]riefs must be supported by citation to the record." *Id.* at 7 (*citing* to 83 Ill. Admin. Code § 200.800(a)). This is almost accurate. What section 200.800(a) actually provides is that: "[s]tatements of *fact* in briefs and reply briefs should be supported by citation to the record." (83 Ill. Admin. Code § 200.800(a) (emphasis added).) Not exactly supportive of Ameren's position that "[i]t is

fundamentally unfair for any party to offer new *opinions* on brief without presenting that opinion through a witness in testimony." (Motion I at 7 (emphasis added).)

It is unfortunate that Ameren failed to closely read Section 200.800 of the Commission's rules of practice because that would have saved a lot of otherwise wasted time and resources. Section 200.800(b)(c) in fact allows a party to raise an argument in reply brief as long as that argument "is responsive to any argument raised in any other party's or the Staff's opening brief." Moreover, these arguments can properly be based on non-expert opinion. The rules do not require that Staff's Reply Brief should be confined to using the language it filed in pre-hearing testimony.

There is no such minimal requirement for initial briefs. The same logic supporting Section 200.800(b)(c) should be applicable to initial briefs. In fact, as long as a party cites to facts in the record, it has been Commission practice to allow them to offer arguments, which may include non-expert opinion, on any issue, even when it has no expert witness. In short, Ameren's theory would silence consumer advocates that had limited resources, while those same consumers would pay (through rates) Ameren for the lack of opportunity to speak.

Ameren argues that Staff is relying on information that was not admitted into the record, although "the opinions are not the same exact opinions, word for word, that were contained in the objectionable hearing exhibit." *Id.* at 4. First, Staff believes Ameren has given enough rationale to ignore its argument in the statement above: Staff has not relied on the objectionable hearing exhibit in its IB. (*See id.*) Staff respects the ALJs' decision regarding that exhibit, and would note that the ALJs correctly ignored Ameren's misguided attempt to object to the exhibit as "hearsay" as the witness was clearly in the

room and could have been crossed, despite Ameren's assertions to the contrary in its Motion I. Moreover, Staff discussed its expert opinions thoroughly in both its direct and rebuttal testimony, as will be discussed. (*See* Staff Ex. 3.0 at 10-13; Staff Ex. 8.0 at 3, 15-18; Staff Ex. 8.0, Attach. A at 2-21.) As will be demonstrated, Ameren's argument that Staff's opinions "are no where to be found in Staff's testimony and earlier data responses" cannot be supported in light of the content of Staff's testimony and earlier data request responses, and thus, it should be ignored. Staff presented its expert opinion through its witness, Ms. Bonita Pearce, and the arguments in Staff's IB are based on Ms. Pearce's expert opinions, as presented in Staff Ex. 3.0, 8.0, and Staff Ex. 8.0, Attachment A, or on non-expert opinion. Ms. Pearce was available to Ameren for cross-examination at the evidentiary hearing, but Ameren chose not to cross her. (Tr. at 286:14-15 (Sept. 17, 2013) ("MR. KENNEDY: Thank you, Your Honor. We will have no cross for Ms. Pearce.").) Nothing discussed in Staff's IB can be properly characterized as a "new" fact in this docket, and Staff is permitted to present arguments based on new non-expert opinions as well as the expert opinions in the record, should it decide to do so.

Finally, Ameren threatens that should the Commission rely on portions of Staff's IB and RB in question in its conclusion, then Ameren would have "grounds for reversal" of that Order. (Motion I at 9; Motion II at 8-9.) Staff would merely note that any Commission Order in the eyes of a losing utility consitutes "grounds for reversal."

Ameren also forgets that the Commission admonished Staff in the last Ameren formula rate case for merely identifying adjustments and providing non-detailed and generic rationales. (*See* Order at 92, ICC Docket No. 12-0001 ("Given the lack of any

detailed objections to any particular expenses, the Commission is not inclined to adopt Staff's adjustment.").) Motion I serves primarily to clarify and support Staff's position that Ameren has failed to carry its burden of proof regarding these credit card costs.

In fact, Ameren contends that Staff must prove each individual expense to be imprudently incurred, unreasonable in amount, or not a legitimate business expense. (Ameren Ex. 16.0 at 3.) Ameren takes this position despite the fact that it was expressly rejected by the Commission in its most recent Rate MAP-P Modernization Action Plan - Pricing Annual Update. (*See* Order, ICC Docket No. 12-0293 (Dec. 5, 2012).) Ameren must carry the burden of proof that these credit card expenses are prudently incurred and reasonable in amount. 220 ILCS 5/16-108.5(c)(1). Additionally, the Commission specifically addressed and noted that general corporate standards are inapplicable to Ameren because:

> To the extent that AIC feels that its current P-Card policies are consistent with general corporate standards, the Commission reminds AIC a comparison is not appropriate when the corporate entity in question simply passes purchasing card expenses on to its captive customers. The customers of a typical corporation can choose to spend their money elsewhere if they can find better prices. AIC's customers have no choice but to accept the P-Card purchases in their delivery service rates.

(Order at 69, ICC Docket No. 12-0293 (Dec. 5, 2012).)

In the same Order, the Commission also directed Ameren to provide enough information so the Commission could reach reasonable decisions. *Id*. ("When expense reports are submitted by employees, it is not unreasonable to expect the employee to report what particular activity he or she was engaged in when an expense was incurred and why that expense was necessary."). Ameren, ignoring the Commission's directive,

fails to provide the required supporting information; instead it contends that it is Staff's burden to prove each expense was not reasonable.

Moreover, the Commission's procedural rules state, in relevant part:

> All Commission discretion under this Part shall be exercised so as to accomplish the goals set forth in the remainder of this Section.
>
> a) Integrity of the fact-finding process – *The principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision*.

83 Ill. Adm. Code 200.25 (emphasis added). Because of these tactics, in which Ameren assumes a limited record supports its position while doggedly attempting to make Staff carry its burden of proof, Staff urges the Commission to deny the Motions so that the arguments at issue in Staff's Briefs can help rationalize the evidence in the record.

Specifically, Ameren argues portions of Staff's IB "must be stricken, not considered, and not included in the Commission's final order in this case" for essentially two reasons. (Motion I at 1.) Similarly, Motion II criticizes Staff's Reply Brief ("RB") as purportedly failing to provide the same positions taken in its rebuttal testimony and to provide a witness who sponsored those statements. (Motion II at 6.)

For example, in its argument supporting its Motion II, Ameren states: "Staff cannot provide the proper citations to evidence Staff submitted, because these 'final' positions were not in Staff's rebuttal testimony." *Id.* This argument is meaningless. It assumes that nothing that occurs subsequent to Staff's filing of rebuttal testimony can have any impact on the final recommendation Staff makes to the Commission. Therefore, no information gleaned from surrebuttal testimony, cross examination during the evidentiary hearings, or briefings can impact Staff's final recommendations to the

Commission. In Ameren's opinion, Staff's involvement in a proceeding before the Commission would end as soon as the rebuttal testimony is filed. This is incorrect.

Staff will address each of these arguments in turn, and will demonstrate why each is meritless and should be ignored in this case.

D. Staff Expert Opinions Were Timely Disclosed in Testimony

Ameren argues that Staff's IB contains "new expert opinions on credit card expenses that were not timely disclosed and included in the record evidence." *Id.* Even putting aside for now Ameren's baseless argument that no party may present new opinions in brief, this is patently false. Staff's opinions on credit card expenses were timely disclosed and included in the record. (*See* Staff Ex. 3.0 at 10-13; Staff Ex. 8.0 at 3, 15-18; Staff Ex. 8.0, Attach. A at 2-21; Tr. at 286:9-12 (Sept. 17, 2013)). Staff will address each of the alleged offensive excerpts of Staff's IB in turn, but also notes Ameren, not Staff, must satisfy the burden of proof as to whether the credit card expenses were prudently incurred and reasonable in amount. 220 ILCS 5/16-108.5(c)(1). Ameren is attempting to have the Commission strike Staff's discussion of Ameren's failure to satisfy its legal burden, which is properly addressed in Staff's IB and RB.

Ameren requested the Commission strike the following:

1. <u>First, the Company has no standard for reviewing and approving or denying credit card purchases submitted for reimbursement; rather, managers must simply decide whether the expenses are "business-related."</u>

This sentence comes from Staff IB at 3 (*citing* Tr., 71:6-9 (Sept. 16, 2013)). Staff cited to the portion of the transcript that supported this statement in its IB; Staff is

properly referring to Ameren's record opinion. (*See* Staff IB at 3.) The corresponding excerpt of the transcript, in context, follows:

> **Q. Okay. So is there a standard process undertaken by supervising personnel in determining whether a credit card charge should be approved or not?**
> A. Yes. Speaking from a supervisor's perspective, I look at an employee's expense report, look at the business justification for those charges, and insure that the proper justification is there before I approve those charges.
> **Q. And are there any standards for what the proper justification would have to be?**
> A. Yes, they have to be business-related expenses.
> **Q. And this process that you go through, is that a standard process that other supervisors would go through as well? . . . When I say standard practice, I'm referring to any sort of companywide written procedure or guidelines, handbooks, anything of that nature. I don't know what you might have, but something along that nature where supervisors could refer back to have their decisions be more standardized along the lines of what you said that you did, Ms. Voiles.**
> A. There is a corporate credit card policy that employees and --- all employees have to abide by that corporate credit card policy, and that's part of the policy. There's employee responsibility. So the specific employee that has that corporate credit card has a responsibility, and so does the supervisor who is approving those charges. So there is a policy in place at the Company.
> **Q. Okay. And so do those policies preclude any types of purchases?**
> A. Yes, they do, and that comes back to the employee's responsibility as well as the supervisor's responsibility in looking at those charges. So you have to – when you get a credit card statement, you do have to look at the charges that are on that – that list of transaction [to] insure (sic) that those charges were incurred, that they were business-related expenses, and if not, you have to take care of the charges in a negative expense report to take those off of the company recovering those --- those costs.

(Tr., 71:6 – 72:21.)

Staff accurately summarized the statements made by Ms. Voiles on the record. *See id.* Although Ms. Voiles was asked multiple times what the standard of review was for approving or denying credit card expenses, she repeatedly indicated that supervisors have a responsibility to ensure only that expenses were "business-related."

Id. While Staff could have transcribed the transcript excerpt into its IB, Staff need not do so; any party may accurately summarize the points made by another party on the record.

Moreover, the sentence in question is not Staff's opinion; it is Ameren's admission. (*See* Motion I at 1.) Any party may cross-examine the opposing witnesses, and may use the information gained during cross-examination in its briefs. As Ameren correctly states, "[w]itnesses are required to swear or affirm their testimony and be available for cross-examination. . . . This process helps to ensure . . . due process rights . . . are not violated." *Id.* at 7. Staff is properly discussing the witness's cross-examination, which is on record, and to which Staff cited appropriately. The Commission should ignore Ameren's request to strike this sentence, as its request would improperly violate Staff's due process rights.

2. <u>The policies and standards imposed by AIC surrounding the usage of Ameren credit cards apparently do not require that expenses be necessary for the provision of utility service or that the expenses provided benefits to ratepayers.</u>

Staff failed to properly cite to support for this sentence. However, Staff does not believe this, in and of itself, is grounds for striking this sentence, as it is in fact supported by a statement in the record. As discussed above, Ms. Voiles stated that these expenses need only be "business-related" to be approved by an Ameren supervisor for reimbursement. (Tr., 71:6 – 72:21 (Sept. 16, 2013).) This would necessarily mean that Ameren does not consider whether an expense is (1) necessary for the provision of utility service or (2) whether the expense provided benefit(s) to ratepayers before the supervisor determines if the expense should be reimbursed. (*See id.*) Expenses that are neither necessary for the provision of utility service nor providing

benefits to ratepayers may still be business-related.

In the sentence in question, Staff merely restated Ms. Voiles' cross-examination in the context of the legal standard of review under which the Commission should review these credit card expenses. This is neither testifying improperly in brief, nor making statements of fact unsupported by the record; it is a discussion of the logical conclusion of Ms. Voiles' statements laid over the relevant legal standard, as held by the Commission. *See* 220 ILCS 5/16-108.5(c)(1). Therefore, Ameren's argument is moot, and should be ignored.

3. This raises concerns that the review and approval by managers of charges on the Ameren credit cards belonging to employees under their supervision does not provide sufficient protection to ratepayers that the charges incurred on the Ameren credit cards are prudently incurred and reasonable in amount.

While Staff does not provide a citation to this particular sentence, it is clearly dependent upon the previous sentence, for which Staff did provide a citation to the record. The previous sentence was "[t]hird, Ms. Voiles indicated she has approved every expense report ever submitted to her for approval. (Tr., 73:10-13 (Sept. 16, 2013).)" (Staff IB at 31 (emphasis in original).) Again, Staff is merely discussing the statements made by Ms. Voiles on cross-examination in the context of the Commission legal standard of review. In Ameren Illinois Company d/b/a Ameren Illinois, Order at 67-69, ICC Docket No. 12-0293 (Dec. 5, 2012), the Commission explained that:

> The primary concern is the apparent lack of controls over P-Card use. The Commission recognizes that Ms. Pagel testified to the existence of limitations on P-Card use, but at the same time she did not seem too sure of the specifics for any of the departments, even her own. This suggests to the Commission that AIC needs to do a better job of educating its employees on P-Card use and setting reasonable limits on usage. One supervisor's or employee's notion of what may constitute reasonable usage may not be the same as another's. . . . To the extent that AIC feels

> that its current P-Card policies are consistent with general corporate standards, the Commission reminds AIC that such a comparison is not appropriate when the corporate entity in question simply passes purchasing card expenses on to its captive customers. . . . The listed P-Card charges are questionable because the expenses at some retailers are arguably excessive and/or not reasonably related to the provisioning of delivery services. In the absence of better support for these charges, the Commission finds that recovery from delivery service customers is unreasonable.

If a party could not properly discuss the statements made by a party on cross-examination in the context of the Commission's prior reasoning on the issue in its briefs, then there would be no benefit in holding the evidentiary hearing nor in allowing cross-examination of the witnesses. Again, Ameren's argument should be ignored.

> 4. <u>It can be argued that a standard flower arrangement sent by Ameren but reimbursed by ratepayers through formula rates shows no real care or concern at all from Ameren. By including these expenses in utility rates, the Company is merely taking credit for a gesture that was unknowingly and unwillingly paid for by ratepayers. If the Company truly wanted to show its genuine care and concern for its employees, it would willingly provide the requisite gestures without requesting reimbursements of its out-of-pocket expenses for those caring gestures from ratepayers.</u>

The sentences in question are natural extensions of Ms. Pearce's statements in her rebuttal testimony, which is of record. On cross-examination, Ms. Voiles stated she felt Ameren should be reimbursed for expenses related to flowers because it showed Ameren's care and concern. (Tr., 76:23-77:21 (Sept. 16, 2013).) Therefore, Ameren's witness said she thought the Commission should allow recovery for these reimbursements. *Id.* In Staff's IB, Staff simply summarized the statements made by Ms. Pearce when she specifically responded to Ameren's request for further explanation of her proposed credit card adjustments in AIC-Staff DR Series 8 Responses. Those responses were properly attached to Staff's Rebuttal testimony and are part of the

record in this docket. (*See* Staff Ex. 8.0, Attachment A). In those responses, Ms. Pearce stated, in part:

> It is readily apparent that . . . floral arrangement[s] . . . provided to the employees provide these employees with benefits. However, no quantifiable ratepayer benefit was indicated in the support provided by AIC in response to discovery.
>
> . . .
>
> [T]he . . . items . . . make the workplace more enjoyable, but are neither necessary for the performance of service nor have they been shown to provide greater efficiencies.
>
> . . .
>
> The Company has provided no measure of the impact the disputed costs have on the creation of a positive workplace environment, nor has any measure of ratepayer benefit from said positive workplace environment been quantified by the Company. Therefore, AIC's assertions that gratuitous items and events (such [as] . . . flowers . . .) create a positive workplace environment which results in ratepayer benefits are unsupported.
>
> . . .
>
> Any amount of purchase paid for with ratepayer funding is subject to review for reasonableness of the amount and the reasonableness of the type of expense, since the Company is guaranteed dollar for dollar recovery of all costs through the reconciliation adjustment.

(Staff Ex. 8.0, Attachment A at 11-14.) Furthermore, Ms. Pearce indicated in the affirmative response that it is her "contention that utility rates should not contain any costs of flowers for employee funerals and farewells." *Id.* at 14, 15.

Therefore, the Commission should ignore Ameren's request to strike these sentences, as its request would improperly violate Staff's due process rights, as discussed above.

5. <u>Also, it appears that individual managers buy various gifts for new employees under their direction and that the "gifts" to new employees are not consistent.</u>

In context, the "gifts" in the sentence in question refer to the "pens, travel mugs,

coffee mugs and coasters for new employee packets." *Id.* at 15. It can be deduced that the purchase of "105 Ameren pens with the Ameren Illinois logo," "72 travel cups for new employee packets and kudos," "73 coffee mugs for new employee packets and kudos," and "100 sandstone coasters for Div 4's new employee packets & kudos – 50 gift boxes" indicate that not all new Ameren employees received the same "new employee packet and kudos." (*See* Ameren Ex. 16.1 at 3:81-86.) As is clearly stated only Division 4 new employees were to receive sandstone coasters. (Staff Ex. 8.0, Attachment A at 34:6-9.) Further, Staff is aware that the number of new Ameren employees in 2012 exceeded 50, 72, 73, or even 105 as it is generally known that the number of full-time employees increased by 191 from 2,803 full-time positions as of December 31, 2011 to 2,994 full-time positions as of December 31, 2012 (2012 and 2011 Forms 21 ILCC (submitted to the Commission and publicly available) at 32). So, it is clear from the evidence in the record that individual managers do not purchase consistent "gifts" to new Ameren employees under their supervision.

Again, Staff is merely discussing the specific disputed credit card expense categories in the context of the legal standard. (*See* Ameren Illinois Company d/b/a Ameren Illinois, Order at 67-69, ICC Docket No. 12-0293 (Dec. 5, 2012).)

> The primary concern is the apparent lack of controls over P-Card use. The Commission recognizes that Ms. Pagel testified to the existence of limitations on P-Card use, but at the same time she did not seem too sure of the specifics for any of the departments, even her own. This suggests to the Commission that AIC needs to do a better job of educating its employees on P-Card use and setting reasonable limits on usage. One supervisor's or employee's notion of what may constitute reasonable usage may not be the same as another's. . . . To the extent that AIC feels that its current P-Card policies are consistent with general corporate standards, the Commission reminds AIC that such a comparison is not appropriate when the corporate entity in question simply passes purchasing card expenses on to its captive customers. . . . The listed P-

> Card charges are questionable because the expenses at some retailers are arguably excessive and/or not reasonably related to the provisioning of delivery services. In the absence of better support for these charges, the Commission finds that recovery from delivery service customers is unreasonable.

Id.

Staff clearly provided its opinion on such gifts in its response to AIC-Staff DR Series 8, when Staff answered in the affirmative that "utility rates should not contain any costs of such [gift] items given to new employees." (Staff Ex. 8.0, Attachment A at 14, 15.) Thus, the sentence should not be stricken.

> 6. Notably, Ms. Voiles failed to explain how the consumption of lunches, snacks and desserts during safety meetings enhances a safe work environment. Clearly, it is possible for AIC to hold a safety meeting without incurring these costs; therefore, they are unnecessary and excessive.

The first sentence merely points out that the record does not indicate how the consumption of lunches, snacks and desserts during safety meetings are prudent and reasonable in amount. *See* 220 ILCS 5/16-108.5(c)(1). Ameren purported that these items enhance a safe working environment, which in turn, is purportedly sufficient to qualify them as both prudent and reasonable expenses. (Tr., 79:9-24 – 80:2 (Sept. 16, 2013).) Therefore, the first sentence should not be stricken.

Moreover, this assertion by Staff is a summary of Ms. Pearce's responses to AIC-Staff DR Series 8, which were properly attached to Staff's Rebuttal testimony and are part of the record in this docket. (*See* Staff Ex. 8.0, Attachment A at 14, 15 ("Q. Regarding her various disallowances for food and beverage for employee 'retirements,' 'appreciation,' and 'anniversaries,' is it Ms. Pearce's contention that utility rates should

not contain any costs of food and beverages for employee 'retirements,' 'appreciation,' and 'anniversaries'?" A. "Yes that is Ms. Pearce's contention.").)

The second sentence is also clearly a natural conclusion of Ms. Pearce's testimony on this issue, and is also properly included in the IB. Ms. Pearce specifically responded to Ameren's request for further explanation of her proposed credit card adjustments in AIC-Staff DR Series 8 Responses. In those responses, Ms. Pearce stated, in part:

> It is readily apparent that snacks, [and] meals . . . provided to the employees provide these employees with benefits. However, no quantifiable ratepayer benefit was indicated in the support provided by AIC in response to discovery.
>
> . . .
>
> [T]he . . . items . . . make the workplace more enjoyable, but are neither necessary for the performance of service nor have they been shown to provide greater efficiencies.
>
> . . .
>
> The Company has provided no measure of the impact the disputed costs have on the creation of a positive workplace environment, nor has any measure of ratepayer benefit from said positive workplace environment been quantified by the Company. Therefore, AIC's assertions that gratuitous items and events (such as snacks, [and] meals . . .) create a positive workplace environment which results in ratepayer benefits are unsupported.
>
> . . .
>
> Any amount of purchase paid for with ratepayer funding is subject to review for reasonableness of the amount and the reasonableness of the type of expense, since the Company is guaranteed dollar for dollar recovery of all costs through the reconciliation adjustment.

(Staff Ex. 8.0, Attachment A at 11-14.) Furthermore, Ms. Pearce indicated in the affirmative response that it is her "contention that utility rates should not contain any costs of donuts and other snacks purchased for employee meetings and celebrations." *Id.* at 14.

7. Moreover, it could be argued that these items may actually distract employees to the extent it hurts the productivity of safety meetings.

This sentence is not provided as fact; it is Staff's position. It states "it could be *argued*," which clearly indicates this is not fact, but an agrument. As such, the sentence should be allowed to remain in Staff's IB.

8. Notably, Ms. Voiles does not address how the Company communicates with its field personnel during normal business operations and why that system cannot be used for storm response in lieu of the disputed televisions and satellite service.

This sentence merely points out that how Ameren communicates with its field personnel during normal business operations is not in the record and is, thus, an accurate statement that is properly included in Staff's IB. In addition, the record does not indicate why televisions and satellite service are necessary for storm response instead of the communication process used during normal business operations. *See* 220 ILCS 5/16-108.5(c)(1). Ameren purported that these items "provide service for the customers by insuring (sic) that our employees are very well aware of what's going on with regard to the weather," which in turn, is purportedly sufficient to qualify televisions and satellite service as both prudent and reasonable expenses. (Tr., 80:7-16 – 81:1-3 (Sept. 16, 2013).) The record does not include an explanation as to why a flat-screen TV with satellite service is necessary for storm response. (Tr., 80:7-16 (Sept. 16, 2013).) Staff may properly indicate this void of evidence.

9. Moreover, it is unclear why in this modern age where a plethora of free, accurate weather reports from news or government agencies is available from the internet or radio that a flat-screen TV with satellite service is necessary or reasonable to learn about the weather.

This sentence merely points out that the record is unclear why flat-screen TV and satellite service are prudent and reasonable in amount. *See* 220 ILCS 5/16-108.5(c)(1).

Ameren purported that these items enhance a safe working environment, which in turn, is purportedly sufficient to qualify them as both prudent and reasonable expenses. (Tr., 80:7-16 (Sept. 16, 2013).) The record does not include an explanation as to why a flat-screen TV with satellite service is purportedly necessary during a storm response. *See id.* Again, Staff may properly indicate this void of evidence.

> 10. It should be noted, however, that AIC did not establish that there were any standard requirements imposed for the purchase of clothing, i.e., a company uniform. Thus, the clothing apparel could largely be of any style or color and from any vendor as long as it had an AIC logo.

It can be deduced, that an individual purchase from Jedco Sales of "2 logo shirts, 1 hoodie" with a 1% discount (Staff Ex. 8.0, Attachment A at 34:10.) indicates that there are no standard requirements imposed on the purchase of clothing and that the clothing purchase could be of any style or color. In fact, the record in this case does not establish that there were any standard requirements imposed for the purchase of clothing. (Tr., 81:12-20 (Sept. 16, 2013).)

Ameren purported that these items enhance customers' "understand[ing] that they're talking to an Ameren Illinois employee," which in turn, is purportedly sufficient to qualify them as both prudent and reasonable expenses. (Tr., 81:7-15 (Sept. 16, 2013).) However, these contentions have no further support than this assertion. 220 ILCS 5/16-108.5(c)(1). Additionally, it remains unclear why flame retardant clothing is necessary simply so that customers may identify AIC employees. The sentences included in Staff's IB simply demonstrate the record does not indicate why clothing that is not uniform could enhance a customer's "understand[ing] that they're talking to an Ameren Illinois employee." (*See* Tr., 81:7-15 (Sept. 16, 2013).) Staff may properly point this evidence void out.

11. It could, thus, be argued that Ameren employees can more officially and effectively identify themselves as such by using a Company name badge with the employee's photo. Such official AIC photo identification would be more reassuring to customers that they are talking to an Ameren employee since a non-Ameren employee could easily craft any shirt with an AIC logo and pose as an Ameren employee.

This sentence is not provided as fact; it is Staff's position, which is properly included in its IB. Clearly, it states that "it could, thus, be *argued*," which indicates that this is not fact, but an argument. Therefore, the sentence should remain in the record.

12. It is unclear exactly why AIC purchases "reliable, real-time information on local news stories and extreme weather events" by watching the same weather information that is broadcast free to the public through the internet, radio and local TV stations as it happens. It is equally unclear why AIC's system used to dispatch information to field personnel during normal work operations is not the primary means of communicating pertinent storm outage information to necessary personnel, instead of satellite television weather reports which duplicate information also monitored on computer and Internet resources.

Again, these sentences merely point out that the record does not include this evidence and they are properly included in Staff's RB. Ameren purported that these items are necessary to "provide[] AIC with reliable, real-time information on local news stories and extreme weather events in – or coming towards – AIC's service territory," which in turn, is purportedly sufficient to qualify them as both prudent and reasonable expenses. (Staff IB at 20; *see* Ameren IB at 45.) The statements in question simply indicate that based on the record, it is unknown why other, free modes of gaining the real-time information on local news stories and extreme weather events in or near Ameren's service territory are not sufficient. (*See* Ameren IB at 45.) Staff may properly point out this lack of evidence.

13. It is unclear exactly how AIC employees "meet customer expectations in the event of storm outages" by watching the same weather information that is broadcast free to the public through the internet, radio and local TV stations as it happens. It is equally unclear why AIC's system used to dispatch field personnel during normal work operations is not the primary means of communicating pertinent storm outage information to necessary personnel, instead of satellite television weather reports on flat screen TVs, as part of AIC's storm preparedness and response efforts.

These sentences merely point out that, based on the evidence in the record it is unclear how flat screen TVs and satellite service credit card charges are prudent and reasonable in amount. *See* 220 ILCS 5/16-108.5(c)(1). Ameren argues that these items are "work-related," which in turn, is purportedly sufficient to qualify them as both prudent and reasonable expenses. (Staff IB at 21; *see* Ameren IB at 48.) Ameren's IB states that customers' expectations are met by Ameren's flat screen TVs and satellite service (*See* Ameren IB at 48-9.), but any support for this evidence is not in the record, and Staff may properly point this lack of evidence out.

14. Given that AIC's current communication system already allows it to communicate with, and dispatch, employees to areas during normal work operations and during emergencies, it is unclear why employees need to have cell phones supplied by the Company. Assuming it was truly necessary for AIC's storm preparedness to have such cellular phones, and Staff does not concede that it is, it is reasonable to expect the Company to have provided such phones through a Company-wide contract obtained through a normal purchasing function. Such action would ensure that every employee who needs a cellular phone to do their jobs would have the cellular phone (1) in a timely manner; (2) at a Company-approved cost; (3) through an appropriate vendor; and (4) with the necessary features. The Company, however, has not done any of this.

Once again, these sentences merely point out that the record is unclear how AIC communicates with its employees during normal work operations such that it necessitates employees purchasing individual cell phones on the Ameren credit card..

Ameren simply purported that these items are "work-related," which in turn, is purportedly sufficient to qualify them as both prudent and reasonable expenses. (Staff IB at 21, 22; *see* Ameren IB at 49.) The record contains no explanation as to why the Company's current communication system, which allows it to communicate with and dispatch employees, is not a sufficient means of communication.

AIC further complains that the statements are (a) new opinions and positions on the necessity and procedures surrounding the purchase of employee cell phones; (b) not included in Staff's pre-filed testimony; and (c) not included in Staff's IB. (Motion II at 3.) However, the basis for the statements were included in Staff's testimony. Staff disallowed the cost of cell phones purchased with the Ameren credit card in pre-filed direct and rebuttal testimony (Staff Ex. 3.0, Schedule 3.04 and Staff Ex. 8.0, Schedule 8.04, respectively). Additionally, Staff Ex. 8.0, Appendix A, p. 7 and pp. 34-36 included Staff witness Pearce's opinion that the cost of cell phones should be disallowed because they (i) are unnecessary for the provision of delivery service; (ii) do not provide benefits to ratepayers; and (iii) benefit AIC employees as a perquisite.

The record does not indicate why such phones are necessary for the provision of delivery service; how they provide benefit to ratepayers; or how the phones are not merely a perquisite to AIC employees. Ameren could have responded to each of Staff's concerns, but instead attempted to shift the burden of proof to Staff to show why the cost of cell phones and other purchases *are not reasonable and prudent costs that should be recovered from ratepayers.*

Staff may properly point out in its Briefs this lack of evidence in the record.

15. <u>The AG proposed an adjustment increasing the Company's Miscellaneous Operating Revenues for "vacating frequencies under</u>

> Microwave Relocation Contracts." (AG IB, 29-34.) While Staff did not take a position on this issue in testimony in this proceeding, Staff supports this adjustment by the AG because, as the AG correctly points out, "such revenues are not reflected in either the transmission of the distribution revenue requirement . . . ratepayers are unfairly and unreasonably denied the benefit of these revenues." (Id., 33.) However, it is unclear which allocator should be used for the calculation of the adjustment. In rebuttal testimony, the AG recommends that 92.06% of the revenues from the "sale of spectrum" be allocated to distribution. (AG Ex. 3.0, 6:132-134.) But in the AG's IB, the AG references AG Exhibit 1.3, which bases the adjustment for these revenues on the AIC Net Plant Allocation Factor of 79.99%. (AG IB, 34.) Since the AG's rebuttal testimony also references AG Exhibit 1.3 in its ultimate recommendation (Id., 7:135-139.), Staff supports that $1,028,180 increase to the Company's Miscellaneous Operating Revenues that reflects a 79.99% allocation factor for distribution.

The above statement in Staff's RB does not present any new evidence, but rather clarifies the information in the record. In its IB, AIC argues that Mr. Brosch changed his allocator from the plant allocator of 79.99% to the labor allocator of 92.06% and focuses on the use of the incorrect allocator. (AIC IB at 31.) Staff points to the record evidence to show that the AG's ultimate recommendation references the schedule from its direct testimony which bases the adjustment on the plant allocator of 79.99%. The AG's IB confirms that is the case. *Id.* at 30-34.

The AG even acknowledged this in its RB:

> The Company noted at page 31 of its Initial Brief that "on rebuttal, Mr. Brosch changed his allocator so 92.06% of the revenues were allocated to distribution. (AG Ex. 3.0, p. 6.)" Unfortunately, there was an error at that line 133 of AG Exhibit 3.0, which was corrected to 79.99% in the Second Corrected version, AG Ex. 3.0C2, filed on October 9, 2013. The People's Initial Brief and Corrected Initial Brief correctly stated at page 31, consistent with Mr. Brosch's direct testimony at AG Ex. 1.0 at 7 and AG Ex. 1.3 at 1, that Mr. Brosch uses the Company's net plant allocator of 79.99% in his allocation of the SCADA revenues to the Company's distribution function.

(AG RB at 16, fn 5.) In response to the AG IB on this issue, Staff merely indicated its support of the AG position and did not offer any new argument or evidence to which Ameren has not already responded. Staff believes this clarification is proper and should remain intact in its RB.

16. As an alternative to Staff's $68,000 FEFL adjustment, AG witness Brosch recommended that 100% or $95,705 of the payments to Simantel be disallowed. (AG Ex. 1.3 Corrected, 1; AG IB, 37-41.) Staff is not opposed to the AG's FEFL adjustment.

In the sentences in question, Staff is merely (1) restating the AG's position; and (2) stating that it does not oppose the AG's adjustment, as discussed in the AG's IB. (*See* AG IB at 37-41.) First, all parties may properly characterize the position of the other parties on any issue within their initial or reply briefs. The substance of the AG's position was properly brought up in the record and Ameren had plenty of opportunity to address the position. To the extent Ameren is attempting to have the Commission strike this sentence, this is entirely inappropriate. Moreover, a party may respond to positions and arguments made in the other parties' IBs in its RB. With regard to the second sentence at issue, Staff did just this. There is no reason to strike this language, which is correctly supported by statements made in the record by a party making the arguments supporting the position, and which provides a reply to positions made in another party's IB.

17. In addition, AG witness recommended that 50% or $298,242 of remaining public relation expenses paid to Simantel (i.e., the non-FEFL expenses or $743,635 - $95,705 x 92.06%) be disallowed. (AG Exhibit 1.3 Corrected, 3; AG IB, 37.) Staff supports this additional adjustment.

Again, in the sentences in question above, Staff is merely (1) restating the AG's position; and (2) stating that it does not oppose the AG's adjustment, as discussed in

the AG's IB. (*See* AG IB at 37.) First, all parties may properly characterize the position of the other parties on any issue within their initial or reply briefs. The substance of the AG's position was properly brought up in the record and Ameren had plenty of opportunity to address the position. Second, a party may respond to positions and arguments made in the other parties' IBs in its RB. With regard to the second sentence at issue, Staff did just this. There is no reason to strike this language, which is correctly supported by statements made in the record by a party making the arguments supporting the position, and which provides a reply to positions made in another party's IB.

> 18. AG witness Brosch proposed to disallow (AG IB, 41-44) the following public relations expenses from the 2012 reporting year revenue requirement, as shown on AG Exhibit 1.3 Corrected, page 3:
>
> - Line 7, Karen Foss LLC, $42,015 of promotional, goodwill or image improvement advertising that is prohibited in Section 9-225(1)(a) of the Act (AG IB, 42.);
> - Line 10, Obata Design, Inc., $5,989 relates to corporate goodwill and image enhancement (AG IB, 43-44.);
> - Line 13, St. Louis Business Journal, $13,995 of conference expenses that are unrelated to electricity delivery service and constitute corporate image enhancement or goodwill advertising. (AG IB, 42.)
>
> Staff agrees that these are expenses for the type of promotional and goodwill advertising that is prohibited by Section 9-225(1)(a) of the Act. Staff therefore supports disallowance of those amounts.

Finally, in the sentences in question above, Staff is again merely (1) restating the AG's position; and (2) stating that it does not oppose the AG's adjustment, as it discussed in the AG's IB. (*See* AG IB at 41-44.) First, all parties may properly characterize the position of the other parties on any issue within their initial or reply briefs. The substance of the AG's position was properly brought up in the record and Ameren had plenty of opportunity to address the position. Second, a party may respond

to positions and arguments made in the other parties' IBs in its RB. With regard to the two sentences following the bullet points, Staff did just this. There is no reason to strike this language, which is correctly supported by statements made in the record by a party making the arguments supporting the position, and which provides a reply to positions made in another party's IB.

II. CONCLUSION

As addressed thoroughly above, short of piecing together a brief that consists entirely of a string of direct quotations from the record, any argument in a brief could be characterized as "new" merely because it was stated slightly differently than in the record. Ameren appears to be attempting to do just this in this docket. However, rephrasing the same argument should be insufficient justification for striking any portion of Staff's IB or RB. Moreover, parties may present arguments based on new non-expert opinions, but not facts, in their briefs, despite Ameren's assertions to the contrary. Staff never presented new facts, and thus the Commission should deny Ameren's Motions and should continue to consider Staff's arguments.

Staff, accordingly, respectfully requests the Commission deny Ameren's Motions to Strike Portions of Staff's IB and RB.

Respectfully,

___/s/_____

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